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# ASYLUM AND MIGRATION ISSUES THE CASE OF SOUTH TEXAS FEBRUARY 1989

A STAFF REPORT

PREPARED FOR THE USE OF THE

SUBCOMMITTEE ON IMMIGRATION AND REFUGEE AFFAIRS

OF THE

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# REPORT OF THE SUBCOMMITTEE STUDY MISSION TO THE RIO GRANDE VALLEY

**February 23–25, 1989**

## I. Background

Over the past several months, the number of Central Americans entering the United States to apply for asylum has increased exponentially. As the Immigration and Naturalization Service reports, there has been a sevenfold increase in asylum requests by Central Americans over the past 4 years. The number of applicants for fiscal year 1988 exceeded 50,000. And the rate of application in January of this year, if continued, would result in a number for fiscal year 1989 in excess of 100,000.

Based on the applications they were receiving, the Immigration and Naturalization Service believed that most Central Americans were applying for asylum for the wrong reasons—that they were seeking work permits, and not asylum from persecution at home. INS argued that Central Americans were entering the United States in south Texas, applying for asylum in Harlingen, having their cases transferred on to their ultimate destination in the United States, and applying for (and generally receiving, in accordance with existing regulations) work permission while their cases were under lengthy consideration.

Alarmed by this development, INS decided a change in its asylum processing procedure was in order. On December 16, INS instructed its Harlingen district to adjudicate asylum applications there, rather than transfer them onward to other INS districts.

The result of the December 16 policy was that hundreds of Central Americans remained in the Harlingen-Brownsville area without food and shelter while they awaited the adjudication of their asylum claims. Most camped in open fields or crowded into rooming houses, and some solicited food and assistance on the streets. Local leaders complained bitterly that the Federal Government was implementing Federal policy in a way that harmed local communities.

The December 16 policy was challenged in U.S. district court, and a temporary restraining order was issued. INS was required, during the pendancy of the order, to revert to its policy of allowing asylum cases—and therefore asylum applicants—to be transferred onward to other districts. INS complained bitterly that the majority of applicants then absconded ("scattered to the four winds," as Attorney General Thornburgh described it), and never appeared at their subsequent interviews at other INS offices. INS stated that of 2,541 applicants in Harlingen who requested that their files be

transferred for adjudication in Miami, only 371 appeared for their interviews in Miami 14 days later.

The district court kept the temporary restraining order in effect until February 20. During the intervening period, the Immigration and Naturalization Service developed a plan for addressing the rising number of applications for asylum by Central Americans. On the day the restraining order was lifted, INS Commissioner Alan Nelson unveiled the plan at a press conference in Brownsville.

The plan called for:

—significant increases in INS personnel in the Rio Grande Valley to handle the increase;
—same-day adjudication for most asylum cases;
—the immediate issuance of deportation notices ("order to show cause" notices) to denied applicants;
—the detention or shelter of persons denied asylum by INS while in deportation proceedings.

In addition, the Community Relations Service announced on February 23, an interagency agreement with INS to care for families denied asylum and in deportation proceedings.

## II. Reason for Subcommittee Study Mission

The subcommittee study mission was dispatched by Senator Edward M. Kennedy, chairman of the Subcommittee on Immigration and Refugee Affairs, and Senator Alan K. Simpson, its ranking Republican Member, immediately upon the announcement by the Commissioner of the INS of its new plan on February 20. The study mission included Michael Myers, majority counsel to the subcommittee, and Carl Hampe, its minority counsel.

The study mission was charged with a general review of asylum policy and program developments in the Rio Grande Valley, but more specifically to determine whether refugees were fairly treated within the new INS plan and the impact of the plan on the south Texas public.[1]

In conducting its mission, the staff delegation developed the following itinerary:

### FEBRUARY 23

Arrived at noon. Briefings by INS, Community Relations Service, Public Health Service, American Red Cross, and others involved with the Federal program.

After briefings, the staff delegation proceeded to Port Isabel, spending the remainder of the afternoon reviewing the asylum process, and touring the Bayview detention center.

Evening was spent in discussion with detainees over dinner and meeting with INS detention staff at Bayview.

Late night was spent observing Border Patrol operations.

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[1] The study mission did not address the question of whether Central Americans should be granted discretionary relief from deportation, such as "extended voluntary departure" or temporary safe haven. Such an inquiry would involve foreign policy considerations beyond the scope of this report, which are a matter of separate and continuing debate within the Congress and Executive Branch.

FEBRUARY 24

Breakfast meeting with local mayors and county judge.

Morning and early afternoon briefings by attorneys representing asylum applicants and others working on behalf of recent entrants from Central America.

Afternoon meeting with Catholic Bishop of Brownsville and staff.

Afternoon and evening tours by CRS of residence for unaccompanied minors and Red Cross shelter for adults.

FEBRUARY 25

Tour of Catholic Church shelter (Casa Oscar Romero) and discussions with Central Americans there.

Noon departure.

## III. FINDINGS

### SUMMARY

The new policy of the Immigration and Naturalization Service (INS) in handling and processing a sudden influx of asylum applicants along our borders appears appropriate, though adjustments are required in the asylum process to assure additional opportunities to submit evidence for nonfrivolous applicants. A high-level review of our overall asylum and refugee process is in order, given the lessons of the south Texas experience.

### FINDINGS

*(1) The new policy of the Immigration Service toward south Texas is appropriate and has proven effective in deterring frivolous asylum applications*

Application of the new policy is proceeding smoothly, following its announcement on February 20. A number of Federal agencies are now working in south Texas to assist in its implementation, including not only the Immigration and Naturalization Service, but also the Community Relations Service, Public Health Service, Centers for Disease Control and the Department of State. These agencies are working collaboratively with the local community, the American Red Cross and other agencies to assure that adequate shelter and assistance is provided to persons in immigration proceedings.

In addition, the Immigration Service has augmented its staff considerably in the Brownsville-Harlingen area to both increase its ability to process asylum claims and to apprehend unauthorized entrants.

*(2) Asylum process*

(a) *While INS has added additional safeguards to the asylum process in south Texas, certain adjustments are required to assure greater opportunities for nonfrivolous applicants.*

(b) *The presence of State Department officers at the processing site is the key to the ability of INS to provide speedy asylum determinations under current regulations.*

The asylum process developed for use in south Texas as announced on February 20 includes two new components.

The first is that it provides additional safeguards to that element of the asylum process administered by the INS through multiple layers of officer review. In essence, an asylum application must go through four INS examiners before a decision is rendered.

The process being followed at the Port Isabel processing center includes five steps:

Step 1: initial interview with an examiner, with preliminary inclination of examiner noted.

Step 2: interview reviewed by a supervisor.

Step 3: "advisory opinion" received from State Department officer present at interview site.

Step 4: reexamination of applicant by another examiner.

Step 5: review of file by another supervisor, and final decision made. If denial, an Order to Show Cause and Warrant of Arrest are issued, and the denied applicant is detained or sent to the Red Cross shelter for deportation proceedings.

These five steps are usually completed within a single day.

The study mission was generally impressed by the extent of case development by the examining officers. The asylum examiners had obviously spent a good deal of effort to complete the casefile and to explore the issues raised by the applicant. Each asylum application form was completed by the applicant, and then the initial INS examiner would ask each question again and record the applicant's answers in red pen (next to the applicant's written answer). In many cases, the answers extracted by the examiner were more detailed and specific. The asylum application form (with examiner's interview comments), the State Department material, and other biological data on the applicant were included in the applicant's file for consideration by the final two levels of review by the INS. This was a credible procedure for screening out the vast majority of frivolous cases, and certainly involved more officer casework than study mission members had witnessed in other INS districts.

However, the five-step, single-day procedure was not able to completely accommodate the clearly nonfrivolous applications. In many instances, this was recognized. Applicants with nonfrivolous cases, upon receipt of a negative State Department advisory opinion, were given a "Notice of Intent to Deny." This notice gives the applicant 15 days to rebut the case—to supply additional information to add to the claim of persecution. But the study mission believes that the "Notice of Intent" device could be used more widely than is currently the practice in order to allow nonfrivolous applicants to develop their cases.

In addition, the study mission found the State Department advisory opinion process in need of greater specificity with regard to clearly nonfrivolous applicants. Currently, the State Department provides a form letter—indeed, often a simple "sticker" attached to the application—with no specific information as to the reason or nonreason for the Department's negative recommendation. Therefore, applicants (and for that matter the INS) have no way of knowing the specific basis for the State Department's recommendation to deny asylum, and thus have no meaningful opportunity to rebut—or even to challenge—the advisory opinion. The Depart-

ment of State's advisory opinions are insufficient in circumstances such as south Texas, and especially with regard to "letter of intent to deny" cases and some nonfrivolous applications.

The study mission emphasizes that most cases do not need a more detailed letter of denial, only the cases where a potentially successful asylum claim is present.

*(3) Conditions of detention and shelter are acceptable and improving*

The policy of the Immigration and Naturalization Service, as applied in its Harlingen (Rio Grande Valley) district, calls for the detention or placement in a shelter of persons whose applications for asylum have been denied by INS and who therefore have been placed in deportation proceedings.

Upon denial of asylum by the INS, denied applicants are then placed by the Immigration Service in one of three custody situations. The study mission toured the three kinds of detention or shelter provided through the Department of Justice.

First, single men and single women in deportation proceedings are held in the Immigration Service's Port Isabel detention center. The Port Isabel center is a well-established, well-run facility that has been part of the INS detention system for a number of years.

While some tents have been erected at Port Isabel, as of the study mission's visit, INS had not had to use them to house detainees. The 1,100 bed capacity of the permanent dormitories was sufficient for the 406 men and 165 women who were housed there on the day of the staff mission's visit on February 23. With tents, the capacity of the facility could be expanded to 5,000.

The Assistant District Director for Detention and Deportation stated that lists of free legal services were posted in the detention facility, and that detainees had access to phones, pursuant to the order in the *Orantes* case. One free legal service group challenged this, stating that often the pay phones did not work, and that on one occasion one lawyer was denied access to the aliens during the asylum processing phase of the operation at Bayview.

Second, families are housed in a shelter in Brownsville established by the American Red Cross in January. Unlike the Port Isabel facility, the Brownsville shelter is not a detention center. It is a former agricultural experiment station owned by the U.S. Department of Agriculture at which the Red Cross now shelters, feeds, clothes and provides health care for Central American families whose applications for asylum have been rejected and who are in deportation proceedings.

For the first few weeks, the Red Cross operated the shelter with its own funds. Later, the Red Cross obtained a contract with the Justice Department's Community Relations Service (CRS), effective February 17, 1989. The conditions at the shelter were minimally acceptable. Sleeping arrangements and food and health dispensing arrangements appeared makeshift. However, all parties involved at the shelter stated that conditions would improve shortly, as additional materials and building renovations were planned.

Four hundred forty-three persons were residing in the shelter when the staff delegation visited on February 24. The shelter has a capacity of approximately 700. Service was being provided by the Red Cross, the Public Health Service, and the Community Rela-

tions Service. The quality and commitment of the professional staff was high.

Finally, unaccompanied minors are cared for in an impressive residence operated by International Educational Services (IES) under contract with the Community Relations Service. Children—mostly older teens—usually remain at the residence for only a couple of weeks while IES counselors arrange for their reunification with relatives, usually in the United States. IES works closely with the Immigration and Naturalization Service in that process.

The IES residence, like the Red Cross family shelter in Brownsville, is not a detention center. The children are not "locked up." And IES staff informed the study mission that of the approximately 130 children that have been served by the residence, only nine have absconded. IES simply informs INS should any of the children abscond.

*(4) The local community has been remarkably tolerant of the Central Americans, as local leaders were understandably impatient with the sluggish federal response*

The influx of thousands of Central Americans into and through the Rio Grande Valley has created some dramatic moments for the local community. In December, as INS required asylum applicants to pursue their claims in south Texas (rather than allowing them to pursue their claims in other INS districts, such as Miami or Los Angeles), hundreds of Central Americans were suddenly marooned in the Valley without food or shelter. At one point, some 500 Central Americans had congregated in makeshift lean-tos in an open field adjacent to Casa Oscar Romero, a shelter operated by the Catholic Diocese of Brownsville. The shelter itself had already reached capacity and could not take in the additional crowd. The condition of the Central Americans was aggravated when uncharacteristically cold weather set in.

During December, Central Americans were also staying in cheap hotels and rooming houses, and many were being charged exorbitant rates for bedspace in overcrowded rooms. In some instances, landlords were in gross violation of local codes, and city officials had to take action against them.

In Harlingen itself, crowds of Central American asylum applicants began gathering around the INS storefront office in the central business district. In February, the town mayor stepped in and padlocked the office—again for code violations.

With these highly visible developments, local officials were understandably impatient with the Federal Government. While local officials were generally supportive of INS attempts to cope with the Central American influx, they believed the policy was deeply flawed for not considering what they termed "the humanitarian dimension." They claimed that the Federal Government simply did not seem to have considered the broader consequences of its actions, and had no plan for responding to them.

Mayors expressed the concern their constitutents had over city funds being provided to Central Americans when local services and conditions were not ideal. One mayor noted that he had no support on his board for providing any aid whatsoever to asylum applicants. Another mayor stated that no one doubted that "the asylum

process had been abused" by many of the applicants. Both suggested that the Federal Government retain its increased presence in the Brownsville area for long enough to deter another flow of people similar to that which occurred in January.

Local leaders offered two suggestions in addressing such situations in the future.

First, they recommended that the Federal Government should consult with local leaders before taking policy actions which so directly affect them. As one mayor stated, "We could have told them what the local impact would be." The leaders argued that if INS had consulted and coordinated with them early in the situation, many of the problems that emerged—including the district court's intervention—might have been avoided.

Second, the leaders also complained that they had called for Federal help for at least 2 months before it finally began to arrive. During that period, the only outside relief the community received was the U.S. district court judge's restraining order (which allowed asylum applicants once again to depart the Valley for a period) and the establishment of a shelter for Central Americans by the American Red Cross (at that time without Federal assistance).

These two developments, along with the continuing assistance of the religious community, "bought time" for the federal government. So by the time the court lifted its temporary restraining order, and INS resumed its policy of confining asylum applicants to the Rio Grande Valley, the Justice Department had a more comprehensive plan in place.

*(5) The Federal Government is responding belatedly, but appropriately*

At the time of the study mission's arrival in Texas, the more comprehensive Federal response was in the early stages of implementation. There were three distinct phases in the Federal response to the asylum applicant influx in south Texas:

One, the institution in December of the "no travel policy," with no provision for Federal aid to asylum applicants,

Two, the issuance of a temporary restraining order by U.S. District Court Judge Filemon Vela on January 9, prohibiting INS from continuing the "no travel policy," and

Three, the lifting of the temporary restraining order on February 20, the new policy of denying travel rights to those who were not initially granted asylum, the assignment of additional INS asylum examiners and border patrol agents, and the provision of food, clothing, shelter, and health care to asylum applicants.

The study mission witnessed the several "prongs" of the Federal Government response.

First, the asylum process outlined above—one of the adjudicating most cases within one day and detaining those denied asylum for deportation—had reduced dramatically the number of persons applying for asylum. After an extended period of 400–600 applications daily, the number had dwindled to less than 20 applicants a day by February 23—the third day of the implementation of INS' new policy.

Second, the logistical plans for detaining the Central Americans seemed adequate for the time being, especially for single adults who could be housed at the Port Isabel detention center. However, should the numbers of families and unaccompanied minors grow significantly, then additional arrangements for their care will need to be made through the Red Cross or other agencies.

Finally, both INS and the Community Relations Service had augmented significantly their staff in the Rio Grande Valley. For INS, this included not only asylum staff, but also increased Border Patrol agents and detention and deportation staff. The INS plan called for an increase of up to 500 officers for the district, if necessary.

CRS had also brought in additional personnel from its Washington headquarters and its Miami field office, many with experience in addressing asylum influxes.

Justice Department staff (INS and CRS) was augmented by staff from the Pulic Health Service and the Centers for Disease Control, as well as two State Department officers from the Bureau of Human Rights and Humanitarian Affairs to provide asylum advisory opinions.

Overall, the study mission found that the new INS policy has been met with approval from a substantial number of persons in the south Texas area. While the provision of food, clothing, shelter and health care was slow in coming, the Federal agencies involved, once they did respond, have devised a reasonable plan to cope with the problems created by denied asylum applicants seeking review of their denials while being kept in the area in which they entered the United States.

*(6) Most asylum applications appeared frivolous; but there were also some apparently qualifying claims presented to INS, as well as a few Central Americans met by the study mission with potentially strong cases who were not planning to apply for asylum*

The study mission spent a significant segment of its time in Texas developing a better understanding of the Central American population now entering the United States. The mission reviewed asylum applications and interviewed Central Americans in INS detention, immediately upon their apprehension by the Border Patrol (that is, before being interviewed by INS) and Casa Oscar Romero (the Catholic Church shelter).

Among the cases the delegation reviewed were the asylum applications of the two persons granted asylum on February 21, the 16 applications that were given 15 days to submit additional information or else a denial would result, and a handful of cases that were denied. The two approvals appeared to qualify under the Refugee Act: the applicants were members of organizations that were held in deep suspicion by government or guerrilla groups, and each applicant alleged specific mistreatment of himself or a close family member by the government.

The 16 "intent to deny" cases clearly warranted additional review and the receipt of additional information. A handful had been initially recommended for approval by the examining INS officer, although most of their cases had received the "noncommittal" response from the examiner. Most of these cases alleged more

tenuous contacts with suspect groups, or less specific encounters with government or guerrilla organizations. Thus, while eligibility under the Refugee Act was possible, it had not been clearly established. One important question, not answered to the delegation's satisfaction, is whether these "intent to deny" applicants are informed of the specific areas of weakness or incompleteness in their cases.

The study mission was impressed both by the large number of flagrantly frivolous applications for asylum and by the small, but not insignificant, number with credible or nonfrivolous claims. The study mission did not conduct a survey of the numbers of applicants who, in the mission's view, presented frivolous or impressive claims. But the study mission did believe that some of the "intent to deny" cases should be approved, and that asylum approval rates as a result would be slightly higher.

The study mission was impressed by a number of the characteristics of the Central American population now entering south Texas.

First, there was no single reason offered to explain the fact that the Central American influx—particularly from Nicaragua—had suddenly escalated. Many spoke of cumulative economic problems in Nicaragua or continuing decline in El Salvador. Some Nicaraguans were from areas of that country which were particularly damaged last summer by Hurricane Joan. Still others were resisting conscription—either by their govenment's army or by rebels—and preferred not to take part in their country's civil war.

In general, it appeared that large numbers of Central Americans were now simply "giving up" on their homelands. They saw no hope for improvement in their economies, for the settlement of their civil wars, or for the development of greater opportunity—so they left.

Second, a number of the nonfrivolous cases that were placed in the "intent to deny" category (though perhaps no more than 5–10 percent of applicants overall) were "borderline" cases, and for some the study mission would have been inclined to recommend approval. For example, one study mission member reviewed a case of a Nicaraguan student. He had been part of a student association that occasionally questioned certain government positions. But his involvement in the association has been marginal—he had participated in only one demonstration—so he was informed of the intent to deny his case. In such an instance, it would have been the study mission's inclination to approve the case, although the request that the applicant supply additional information was reasonable.

Third, and most disturbing, the study mission met a handful of Central Americans with promising asylum claims—but who had no intention of risking detention and deportation by applying for asylum.

The study mission encountered one vivid example in the Catholic Church's Casa Oscar Romero. Present there was a former mayor of a small town in a conflictive zone of El Salvador. He had been threatened as part of a campaign by guerrillas—well reported in the U.S. press—of terrorizing mayors. Concerned that he could not be adequately protected in El Salvador, he fled to the United States. Given that so few Salvadorans win asylum in the United States, he was apprehensive about risking an application, even

though he did possess documentation of his circumstance. Instead, he was joining relatives in Chicago in the hopes of surviving as an undocumented alien.

These examples of "good" cases, it should be emphasized, are but a minority of the overall caseload. They certainly are larger in number than the handful of cases approved by the INS in recent weeks, but not so much larger that their approval would encourage a surge of new arrivals into the United States.

*(7) Early results of new INS policy*

There was an extreme decrease in the number of applications after the institution of the new INS policy on February 21, 1989. There were 233 asylum applicants on that day, 51 the next day, 10 applications on February 23, and 16 on February 24. The strong inference to be drawn from these statistics is that the INS policy has been successful in deterring mass spurious asylum applications.

Some refugee advocates claimed that the INS policy was "driving the asylum applicant flow underground." The study mission did meet a few Central Americans with potentially strong cases who were not planning to apply for asylum.

However, a significantly larger number of Central Americans going underground is usually accompanied by a significant increase in apprehensions at the border. This has not been the case. There has been no significant increase in border apprehensions after the new policy was put into place, even though the number of border patrol agents was increased. INS intelligence sources did indicate that a large number of Central Americans were waiting in Mexico, immediately to the south of Brownsville, to observe the next move of the INS before deciding how and where to enter the United States.

## IV. Recommendations

*(1) The present policy has been successful and should continue. Adequate provision is being made for denied applicants who are being detained during their deportation proceedings*

INS should consider leaving the present apparatus in place for a period of time, to continue to deter frivolous asylum applications.

Obviously, the deterrence of frivolous asylum applications is a legitimate policy for INS to follow, as well as funding the Border Patrol at the levels authorized by the Immigration Reform and Control Act of 1986. But should the current policy result in a large-scale increase in detention, Congress should join with the administration to determine whether adjustments to the policy are in order and what additional steps may be employed.

*(2) However, the executive branch must develop clearer policies for rapidly responding to immigration crises, considering not only the enforcement steps to be taken but also the effect of those steps on broader humanitarian and foreign policy questions*

The enforcement steps taken by the INS to isolate the challenge that the Central American migration posed were appropriate, but incomplete. As the study mission found, the executive branch did

not also take into account the broader community and foreign policy impact.

Presumably, plans were made following the 1980 Mariel boat crisis to respond to large-scale emergencies, but no model was available for responding to smaller-scale challenges, such as south Texas was experiencing.

Obviously, the basis for such a model now exists in south Texas. It involves not only INS as an enforcement agency, but also the Community Relations Service and other federal service agencies to deal with the humanitarian aspects which *invariably* accompany such challenges.

In addition, the model must include early consultation with the local community.

*(3) The experience in Texas suggests that Congress and the administration should consider overall revisions in the political asylum system that would ensure a fair but expeditious hearing of each claim of asylum*

Issues which must be considered include:

(a) *Asylum officers should not rely solely on the State Department's advisory opinion in making asylum decisions. INS should expand the "intent to deny" process to those cases where the State Department's advisory opinion is negative or not supplied, but for which the submission of additional information is warranted.*

Consideration should be given to augmenting the procedure used to inform applicants of the INS' intent to deny their cases. This letter is issued currently for those cases on which a negative advisory opinion is received from the State Department which INS is inclined to sustain. INS then issues the applicant a "Letter of Intent" to deny the case, and permits the applicant two weeks to provide additional evidence to support the case.

This procedure could be strengthened in at least two ways.

First, when issued the "Letter of Intent" to deny, the applicant should be informed of the issues in the case. Generally, however, the State Department simply issues a form letter advisory opinion which does not describe the reasons for recommending a denial. If those reasons were made more explicit in the "intent to deny" cases, applicants could then more meaningfully respond to the negative opinion in the two week period currently allowed.

Second, the "letter of intent" process should be used to cover more than just those for which the State Department advises denial. For example, on many cases, the State Department simply informs INS that it has no opinion. Rather than sending INS a formal letter to that effect, the State Department simply affixes a sticker to the application stating that the Department has no opinion in the case.

Upon receiving a "stickered" file back from the State Department, INS usually denies the case. However, the study mission was not convinced that this procedure assured that nonfrivolous applicants were given an opportunity to know the issues in their cases in need of rebuttal.

Thus, consideration should be given to the issuance of "Letters of Intent" to deny to promising, nonfrivolous cases—including those on which the State Department had no opinion.

This will represent an additional—but not inordinate—burden both for the State Department and the INS. For example, of the asylum applications received in the week of the study mission's stay in south Texas, only approximately 5 percent were issued "letters of intent". Even if increased to include some other nonfrivolous cases, the procedure should not become too burdensome.

(b) *Officers should be given wider latitude to approve cases.*

The study mission's review of cases—particularly those issued letters of intent to deny—revealed a number which mission members would have approved. The "letter of intent" cases, admittedly, involve judgement calls. But in making those calls, officers should be given wider latitude to approve cases—to err in favor of the applicant.[2]

Once again, such a change would not involve major alterations in the process. The numbers issued letters of intent are still quite small.

(c) *A means needs to be developed to attract true refugees present in the United States into the asylum system, while avoiding the encouragement of migration outside United States immigration and refugee laws.*

As described earlier, the study mission met a few individuals with arguments for asylum which appeared sound, but who were reluctant to risk exposing their presence to the Immigration Service with an application for asylum.

This sentiment is understandable, though perhaps inaccurate for applicants with good cases. A genuine refugee from El Salvador, who has real reason to fear deportation to his homeland and notes that 97 percent of his countrymen are denied asylum by INS, may decide not to risk applying.

But a mechanism should be available to afford such genuine refugees with access to information regarding their prospects for asylum.

One means by which this might be accomplished is to employ the services of the U.N. High Commissioner for Refugees. While it would not be the study mission's intent to create an undue burden for either the U.S. Government or the United Nations, UNHCR nonetheless might be able to advise applicants and refer appropriate cases to INS with a recommendation of approval.

(d) *Increase resources for asylum processing.*

Clearly, many of the recommendations above require additional resources. It requires more officer time in both INS and the State Department—and thus more money—to develop in greater depth the issues in a potentially successful applicant's case and to inform him of the matters in his case which might be strengthened.

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[2] The majority counsel, but not the minority counsel, believes, at a minimum, if the Attorney General is unwilling to encourage more leeway for asylum officers, he should empower them, on a limited, case-by-case basis, to use the authorities available to the Attorney General to permit the applicant to remain temporarily in the United States.

In addition, resources are needed for the constant training and retraining of asylum officers and for keeping them abreast of up-to-the-minute developments in human rights conditions and refugee law and practice. When asked what one of the unexpected lessons of the recent Texas experience has been, officers commented on the need to update and train officers constantly in the area of asylum.

* * * * * *

In sum, the new administration and Congress are faced with both a genuine challenge and a great opportunity—how to develop lasting and appropriate asylum procedures which quickly screen out the frivolous applicant, while affording the promising applicant every opportunity to argue his or her case. The south Texas experiences highlight strengths and weaknesses in the asylum system which exist nationwide.

The issue is one which deserves priority consideration in the 101st Congress.

## APPENDIX 1.—INS ASYLUM PLAN

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, DC, February 20, 1989.*

[Press Release]

### COMMISSIONER NELSON ANNOUNCES ASYLUM PLAN

Immigration Commissioner Alan C. Nelson today announced steps to be taken by the Government to stem the flow of frivolous asylum claims filed by aliens seeking to stay in the United States. This plan will be phased into effect in the next several weeks to create an effective deterrent to those persons who would manipulate our asylum laws.

The plan includes expedited asylum adjudication in the Rio Grande Valley, a full and fair process for qualified applicants to gain asylum and detention and deportation for unqualified applicants.

Commissioner Nelson stated:

> We are pleased with the action of Federal Court Judge Filemon Vela in lifting the Temporary Restraining Order which now allows the Government to concentrate efforts in dealing with the problem of aliens filing frivolous asylum claims and entering the United States illegally in the Rio Grande Valley.

In announcing this comprehensive plan Commissioner Nelson said:

> We intend to send a strong signal to those people who have the mistaken idea that by merely filing a frivolous asylum claim, they may stay in the United States. This willful manipulation of America's generosity must stop.
>
> The people of south Texas, south Florida and the Nation must know that the Government is taking strong action to stem this flow of frivolous asylum applications. By ending this abuse we will maintain our fair and generous tradition as a nation of refuge for those who have a well-founded fear of persecution,

Nelson concluded.

### ASYLUM ACTION PLAN

The Government intends to implement a plan which will effectively accomplish the detention and deportation of illegal aliens. Deportation is the ultimate deterrent to uncontrolled illegal immigration. Detention is the most effective way of ensuring an alien's appearance at a deportation hearing and a deterrent in itself to illegal immigration. It also provides the shelter and food needed by the aliens pending the adjudication of the asylum claims. It will provide needed humanitarian assistance to these alien families.

The action plan specifies that a total of 500 INS personnel from throughout the country be sent to south Texas for implementation:

(1) 269 Border Patrol personnel to increase enforcement along the border. Of those, 96 newly trained agents will provide security around detention perimeters;

(2) 74 INS adjudications and support staff to provide expeditious processing of asylum applications;

(3) 30 detention personnel assigned to the Port Isabel Service Processing Center to provide detention of applicants for asylum who are in an illegal status in the United States, and ultimately, the deportation of those aliens whose claims are adjudicated and denied;

(4) 16 Special Agents to combat organized smuggling of aliens; and

(5) detail of approximately 141 INS, Department of State and Executive Office for Immigration Review staff to provide fair and expeditious adjudication of asylum claims.

It is evident that illegal immigration impacts all of the United States and must be dealt with on a national basis. The current wave of illegal Central American migrants largely flows through south Texas. Many illegal aliens remain in the south Texas area; many more move on to south Florida and southern California. Others move to different parts of the country such as San Francisco, New York, and Washington, D.C. Efforts must be undertaken at all locations to deal with the problem of illegal immigration.

If this is not done, the flow will increase in all areas of the country; particularly south Texas will be adversely impacted. By the coordinated U.S. Government actions set forth in this plan, we have the best opportunity to allow legitimate asylum claimants to remain in the United States while at the same time stopping the flagrant abuses of the asylum process.

It is also essential that Central Americans and others in the United States who might encourage illegal immigration get the message that people cannot merely come to the United States illegally and "beat the system".

By pursuing the plan of action set outlined here, the United States can stop the abuse of the asylum process and restrict the flow of illegal aliens from Central America.

Unsettled economic and political situations in much of Central America have resulted in an almost sevenfold increase in asylum requests from Central Americans over the past 4 years—from 7,063 asylum requests in fiscal year 1985 to over 50,000 in fiscal year 1988. Thus far, fiscal year 1989 asylum requests are averaging one-third higher than last year. If allowed to continue, this could produce more than 100,000 asylum requests during fiscal year 1989, a high percentage of which will be frivolous based on past and recent experience.

### Successfully Meeting the Challenges

Over the last 8 years the Government of the United States has successfully overcome efforts to circumvent our immigration laws. We have met the challenge of possible continuation of the 1980 Mariel boat lift through a firm policy of interdiction and detention. Similarly, the Haitian Interdiction Program met the challenge of illegal water-borne immigration from the island of Haiti. The Immigration Reform and Control Act of 1986 (IRCA) met the challenge of wide spread illegal entry along the southern land border through increased enforcement and employer sanctions. The marriage fraud amendments of 1986 met the challenge of up to 50 percent fraudulent "marriages of convenience" by providing safeguards to eliminate the potential of fraud.

The firm, fair and consistent application of our laws will meet the latest challenge of asylum abuse as a technique for fraudulent manipulation by those would twist our generosity into personal gain. As we have met the previous challenges successfully, we will meet this challenge through the strong and decisive action announced today.

### Aliens Who Apply for Asylum With the District Director

When an alien appears at an INS office in the Harlingen district for the purpose of applying for asylum and presents a completed application, the following procedure will be followed:

(1) Accept and file the application;

(2) Refer the alien to an immigration officer for an adjudication of his/her asylum claim;

(3) If the asylum application is approved, asylum status shall be granted for a period of one year from the date of approval; and

(4) If the asylum application is denied, an OSC or OSC/WA shall be issued by an immigration officer authorized by regulation. The OSC or OSC/WA, together with the alien's asylum application, will be filed with the immigration court in Harlingen. The alien may review the application for asylum before the immigration judge.

### Aliens Arrested by Immigration Officers

When an alien is arrested by an immigration officer, deportation proceedings shall be commenced against each alien by the issuance of an Order to Show Cause

(OSC) or an Order to Show Cause and Warrant of Arrest (OSC/WA) and the filing of either document with the Office of the Immigration Judge in the Harlingen district.

The Border Patrol has been directed to increase its enforcement activities in the Lower Rio Grande Valley. To accomplish this objective, additional officers and resources were previously assigned to the area in January 1989. The U.S. Government will assign, by February 21, 1989, an additional 85 agents, with further numbers to be detailed as needed. Those officers will be involved in patrolling the U.S. Border with Mexico, checking transportation centers and operating traffic check points leaving the Rio Grande Valley. The added resources are expected to produce a significant increase in arrests and orders to show cause.

Alien smugglers and fraud facilitators, who thrive on the misfortune of illegal aliens, will be a major target of the law enforcement components of INS.

### Prompt Hearing Before an Immigration Judge

After the issuance of an OSC, each alien shall have a prompt hearing before an immigration judge who shall advise him of his/her rights. The alien, through counsel or individually, shall respond to the charge in the OSC and indicate if he/she intends to apply for or renew an application for asylum. The alien may seek a redetermination of the amount of bond, as well as the conditions for release on bond. The immigration judge shall consider the factors specified above for setting bond, including ensuring the alien's becoming a public charge.

The Executive Office for Immigration Review (EOIR) will respond with additional judges and staff, as needed, to an increase in the number of orders to show cause filed with the Office of the Immigration Judge in Harlingen in order to provide a fair and expeditious adjudication of the asylum claims in the context of the deportation hearing.

### Custody

In accordance with U.S. immigration laws and the instructions of the Attorney General, the INS expects to hold in custody many illegal aliens arrested in the lower Rio Grande Valley pending a determination of asylum claims and completion of deportation proceedings. In addition to using regular INS detention capacity, the INS, in conjunction with other Federal agencies, will provide suitable accommodations for those aliens expected to be detained as a result of the decision to initiate deportation proceedings. Provisions will be made for shelter, meals and health care for the detainees during the pendency of their proceedings. INS shall provide for the internal security and safety of the detainees.

As necessary, at any facility without security, INS will conduct a daily rollcall, at which time each detainee must be present. A detainee who fails to be present at roll-call, and/or fails to appear at the deportation hearing will be subject to:

(1) a determination that the asylum application has been abandoned, and

(2) the deportation hearing may be conducted in absentia, and a deportation order may be entered.

### Detention Space Availability

Under this plan the Government intends to provide the following bed space:

- 1,100 beds at Port Isabel Service Processing Center;
- 200 additional detention spaces have been identified at Webb County Detention Facility; and
- 40 detainees have been transferred to the El Paso Service Processing Center; 160 more detainees to be moved shortly.

Expansion potential for additional beds space at Port Isabel may include:

- 750 spaces in 2–3 days utilizing available temporary housing resources; and
- Gradual increase of up to 5,000 spaces within 7–10 days if necessary.

### Detention Policies

Single males will be detained at the Port Isabel Service Processing Center. Discussions are still under way with the Community Relations Service and the Red Cross to provide housing for unaccompanied minors and family units. We consider the humane treatment of families and children as a most important priority. Medical prescreening of asylum applicants will also be provided.

## Conclusion

Uncontrolled illegal immigration has dire consequences. The Immigration Reform and Control Act gave over 3 million aliens the opportunity to apply for lawful status in the United States. It also provided an enforcement mechanism which includes sanctions against employers who knowingly hire illegal aliens. While employer sanctions have been an effective deterrent, thousands still enter illegally in the hopes of getting lost in the immigration underground.

Detention is the most efficient means of ensuring the alien's appearance at the deportation hearing. Deportation is the ultimate deterrent to illegal immigration. The plan of action that the U.S. Government will implement addresses the need for control of our borders and enforcement of the immigration laws as well as the care and safekeeping of the detained aliens during the pendency of their asylum requests and deportation proceedings.

## APPENDIX 2.—INS-CRS INTERAGENCY AGREEMENT

DEPARTMENT OF JUSTICE,
*Washington, DC, February 23, 1989.*

[Press Release]

The Department of Justice today announced its plan to provide emergency social and shelter services through the Community Relations Service (CRS) for Central Americans entering the United States at the border in the Lower Rio Grande Valley of Texas.

"I am delighted to announce the approval of an interagency agreement between the Immigration and Naturalization Service (INS) and the Community Relations Service By Attorney General Dick Thornburgh," said CRS Director Grace Flores Hughes. "This agreement allows CRS to provide emergency social and shelter services through the Red Cross and other voluntary agencies to Central Americans who have been detained by the INS and have been released pending resolution of their status, or who have applied for asylum and are awaiting action on their applications. The Office of Immigration and Refugee Affairs of the Community Relations Service has extensive experience in providing services to alien refugee populations."

"CRS has the full support of the Attorney General. Many CRS staff assisted with the Mariel Cuban Boatlift and have been providing nearly 10 years of service in helping Marielitos and Haitian entrants resettle in the United States. We are very fortunate, indeed, to have this experience in mobilizing Federal and voluntary agency resources through a coordinated and comprehensive approach," Mrs. Hughes said.

"It will be a pleasure for our Agency to expand its working relationship with the INS. With our experience in community mediation and conciliation as well as immigration and refugee affairs, we are able not only to assist the alien refugees, but also the communities their presence impacts," she added.

CRS's emergency shelter services will meet the basic needs of food, shelter and medical care for released deportable aliens who are awaiting the results of Immigration and Naturalization Service proceedings in the Lower Rio Grande Valley. These aliens include those who have been apprehended by the INS and released on their own recognizance and those aliens who have applied for asylum and are awaiting action on their applications.

With the signing of the interagency agreement yesterday, CRS began immediately to seek modification of current CRS agreements with voluntary agencies and through formal Letters of Intent to provide required services. In addition to basic Red Cross shelter services, CRS will work with the Public Health Service to implement its crisis response plan to provide screening and health services to the Central American aliens.

CRS will also immediately expand its existing minors program in Brownsville, which provides child protective services to unaccompanied minors in INS' custody. The current CRS vendor, International Educational Services, will provide these services in compliance with existing child welfare standards and regulations.

## APPENDIX 3.—INS FACT SHEET ON FIRST DAY OF PROCESSING

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, DC, February 22, 1989.*

[Press Release]

FACT SHEET

FIRST DAY OF PROCESSING

233 Asylum applicants processed.

215 Applicants denied—103 Nicaraguans, 61 El Salvadorans, 38 Hondurans, 13 Guatemalans.

16 Applicants issued "intents to deny"—14 Nicaraguans, 1 El Salvadoran, 1 Guatemalan.

2 Applications for political asylum granted:

—32-year-old Nicaraguan male from Managua. A former construction worker the man plans to resettle in Miami.

—65-year-old Nicaraguan male listed a Brownsville address. This applicant listed his occupation as businessman and accountant.

Current population of Port Isabel Service Processing Center—605 (480 males, 127 females).

## APPENDIX 4.—INS FACT SHEET ON PORT ISABEL CENTER

U.S. DEPARTMENT OF JUSTICE,
IMMIGRATION AND NATURALIZATION SERVICE,
*Washington, DC, February 20, 1989.*

[Press Release]

(For more information contact: Virginia Kice, Public Affairs Specialist, (512) 427-8696)

### FACT SHEET

### PORT ISABEL SERVICE PROCESSING CENTER

#### HISTORY

Originally built as United States Naval Air Station.

Taken over by INS in 1961.

From 1961-1977 served as U.S. Border Patrol Training Academy and Detention Center.

In 1980, the facility underwent a massive renovation. The project was completed in 1984, bringing the Center up to its present capacity.

#### SITE

Located approx. 22 miles N.E. of Brownsville, Texas.

Situated on 315 acres.

Facility composed of 80 structures, including 5 dormitories.

Entire facility is self-contained. Center includes on-site fire department, water and sewage treatment, and in emergencies can generate its own electricity.

#### OPERATIONS

The average stay for detainees at the Center is 31 days.

More than 30 different nations are represented among the detainee population.

The majority of detainees are from Central America.

Approx. 5 percent of the detainees at the Center are criminal aliens.

Facility houses both male and female detainees, but the two sexes are kept separate.

Recreational activities include soccer, baseball, volleyball and handball for male detainees. Female detainees participate in aerobics, volleyball, sewing and knitting. All dormitories are equipped with televisions. Movies are shown daily by means of a VCR hookup throughout the facility.

Medical care at the Center is provided by the Public Health service. All new arrivals undergo a complete physical and TB screening.

## APPENDIX 5.—PORT ISABEL DETENTION POPULATION, FEMALE SECTION

### MORNING REPORT—FEMALE SECTION, FEB. 22, 1989

| | |
|---|---|
| U.S.M. | 0 |

PORT ISABEL

| | |
|---|---|
| Total at 12:01 a.m. | 97 |
| Initial admissions | 64 |
| HRL: (2) Guatemala, (9) El Salvador, (10) Honduras, (15) Nicaragua. | |
| BRO: (5) El Salvador, (4) Nicaragua, (2) Guatemala, (2) Honduras. | |
| MCA: (1) El Salvador, (2) Nicaragua, (4) Honduras. | |
| PID: Asylum (3) Guatemala, (2) Honduras, (1) El Salvador, (1) Nicaragua. | |
| POE BRO: (1) Mexico. | |
| Transferred admissions | 0 |
| Transferred or released | 3 |
| Bond: (1) Dominican Republic, (1) El Salvador, (1) Guatemala. | |
| Total | 158 |

NATIONALITY

| | |
|---|---|
| Colombia | 2 |
| Costa Rica | 1 |
| Dominican Republic | 3 |
| El Salvador | 51 |
| Guatemala | 12 |
| Honduras | 43 |
| Mexico | 1 |
| Nicaragua | 43 |
| Nigeria | 1 |
| Jamaica | 1 |
| Total | 158 |

## APPENDIX 6.—PORT ISABEL DETENTION POPULATION, MALE SECTION

### MORNING REPORT—MALE SECTION, FEB. 22, 1989

| | |
|---|---|
| U.S.M. | 0 |

#### USBP APPREHENSIONS

| | |
|---|---|
| Brownsville | 77 |
| McAllen | 8 |
| Harlingen | 1 |

#### PORT ISABEL

| | |
|---|---|
| Total at 12:01 | 380 |
| Initial admissions | 157 |
| Nicaragua asylum: (20), BRO (8), MCA (1). | |
| Honduras asylum: (11), BRO (20), MCA (2). | |
| Guatemala asylum: (3), BRO (6). | |
| El Salvador asylum: (29), BRO (37), MCA (17), HRL (1). | |
| Dominican Republic: BRO (1). | |
| Peru: BRO (1). | |
| Transferred admissions | 0 |
| Transferred or released | 100 |
| Transferred Laredo: Nicaragua (38), Honduras (20), Guatemala (18), El Salvador (6), Dominican Republic (9), Mexico (1). | |
| Transferred B.P.: Jamaica (1). | |
| Bond: Guatemala (1), Ecuador (1). | |
| Dep.: Mexico (2). | |
| V.R.: Mexico (1). | |
| O.R.: Nicaragua (1), El Salvador (1). | |
| Total | 437 |

#### NATIONALITY

| | |
|---|---|
| Bangladesh | 9 |
| Brazil | 8 |
| Colombia | 3 |
| Costa Rica | 2 |
| Dominican Republic | 4 |
| Ecuador | 2 |
| Egypt | 1 |
| El Salvador | 186 |
| Guatemala | 24 |
| Haiti | 6 |
| Honduras | 72 |
| India | 1 |
| Italy | 1 |
| Jamaica | 22 |
| Mexico | 34 |
| Nigeria | 6 |
| Nicaragua | 46 |
| Panama | 2 |
| Peru | 2 |
| Sri Lanka | 4 |
| Uruguay | 1 |
| Iran | 1 |
| Total | 437 |



95-657 (32)